Filed 7/21/09 In re J.M. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.M., a Person Coming Under the Juvenile Court Law.	B207747 (L.A.Super.Ct. No. TJ17144)
THE PEOPLE, Plaintiff and Respondent, v. J.M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Charles R. Scarlett, Judge. Affirmed.

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Esther R. Sorkin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Theresa A. Patterson and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

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The trial court sustained a one-count petition alleging that J.M. made a criminal threat. He appeals, contending that the court's order is not supported by substantial evidence. We disagree and affirm.

BACKGROUND

The petition, filed under Welfare and Institutions Code section 602, alleged J.M. committed one count of criminal threats in violation of Penal Code section 422.[1] J.M. denied the allegation. The trial court sustained the allegation of the petition and adjudged appellant a ward of the court. It placed him in a camp program for a maximum confinement period of three years and ordered him to pay $100 in restitution. J.M. timely appealed.

The evidence introduced at trial showed the following facts: On March 20, 2008, officer Alejandro Limon of the Los Angeles Police Department and his partner, officer Sobieski, stopped their police car at a stop sign. A woman approached them and told them she had just been robbed. She described her assailant as a Black male wearing a black furry jacket with black pants and riding a bicycle. Limon immediately saw J.M. to his left, and, because he matched the robbery victim's description, Limon detained him.

Limon handcuffed J.M., placed him in the back of the police car, and had another police unit pick up the victim to conduct a field show-up. Limon then drove to a liquor store to meet the victim while J.M. sat in the back of the car. The robbery victim did not identify J.M. as her assailant, but Limon ran a background check on J.M. during the field show-up and thereby learned that J.M. was a "missing juvenile" (i.e., a runaway from a nearby location in southern California). Limon informed J.M. that he would return him to his home, but J.M. said he did not want to go home and that he would simply return to Los Angeles.

From the moment of his detention to the field show-up—a total of about 20 minutes—J.M. was angry and cursed at Limon, who sat in the driver's seat of the police

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1 All subsequent statutory references are to the Penal Code.

vehicle. Limon told him to be quiet, and J.M. responded, "[W]hen I come back, I don't give a fuck, this is T-Zone hood, I'm going to find you and kill you." He also repeatedly asserted his membership in the T-Zone Crips street gang. He later apologized to Limon after being processed and booked at the police station on the way to juvenile hall.

Limon testified that he feared for his life. Approximately two months earlier, he had arrested two members of T-Zone for murder. He also testified that younger gang members are the ones who commit the shootings, robberies, and thefts for their gang. He further testified that there were recently "a couple of shootings against L.A.P.D. officers and off-duty officers" in the area. Because of his knowledge of previous shootings and previous arrests of T-Zone gang members, Limon felt that J.M.'s threat was serious.

DISCUSSION

A conviction for making a criminal threat in violation of section 422 requires proof of the following elements: (1) that the defendant willfully threatened to commit a crime that will result in death or great bodily injury to another person; (2) that the defendant made the threat with the specific intent that the statement be taken as a threat, even if there is no intent of actually carrying it out; (3) that the threat, which may be made orally, in writing, or by means of an electronic communication device, was on its face and under the circumstances in which it was made, so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat; (4) that the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family's safety; and (5) that the threatened person's fear was reasonable under the circumstances. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.)

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the

existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

I. Sustained Fear

J.M. argues that there is "no evidence whatsoever of the duration of the fear . . . [to] indicate that the fear was sustained." We disagree.

A threat victim's fear is "sustained" within the meaning of section 422 as long as it lasts for "a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) Limon testified that J.M. made the threat some time during the 20-minute interval that he was detained in the back seat of the police car. Limon stated that he felt threatened by J.M.'s statement, believed it was serious, and consequently feared for his life. J.M. did not apologize until after he had been processed at the police station and was en route to juvenile hall. A reasonable trier of fact could infer from the evidence that Limon's fear did not subside at least until J.M. apologized, because there was no reason for Limon not to remain in fear. Thus, there is sufficient evidence that Limon experienced fear for more than a momentary or fleeting period of time. (See *ibid.* [fifteen minutes was sufficient for "sustained" fear].)

J.M. argues that because there is no evidence that he engaged in any additional conduct either before the threat (such as a history of prior confrontations with Limon) or after it (such as threatening or aggressive physical conduct), the evidence is insufficient to show sustained fear. We disagree. For the reasons we have already described, the evidence was sufficient to show sustained fear, and the absence of evidence of additional conduct by J.M. does not undermine that conclusion.

J.M. also argues that there is insufficient evidence of sustained fear because "[t]here is . . . no evidence whatsoever to show that [Limon's] fear outlasted the apology." The argument fails because even if Limon's fear ended when J.M. apologized, it was still more than momentary, fleeting, or transitory and thus was sufficiently sustained for purposes of section 422.

II. Gravity of Purpose and Immediacy

J.M. argues that there is insufficient evidence of "gravity of purpose [and an] immediate prospect of execution" because he could not "execute the threats personally" while detained. We disagree.

As J.M. acknowledges, the case law holds that one can make criminal threats even while detained or otherwise temporarily prevented from carrying them out. (See *People v. Mosley* (2007) 155 Cal.App.4th 313, 323-326; *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1428-1430; *People v. Franz* (2001) 88 Cal.App.4th 1426, 1448-1449.) Because a threat of future conduct can be sufficiently immediate to violate section 422, the statute does not require an ability to carry out the threat at the time the threat is made. (*In re David L.* (1991) 234 Cal.App.3d 1655, 1658, 1660; *People v. Lopez* (1999) 74 Cal.App.4th 675, 679.) J.M.'s attempt to distinguish the cases fails—they stand for the proposition that J.M. could make a grave and immediate criminal threat even while detained in the back of a police vehicle.[2]

J.M. also argues that his speech was merely an emotional response to Limon's order to be quiet. Although a reasonable trier of fact could infer that J.M.'s statement was a mere emotional response rather than a criminal threat, we must "view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" (*People v. Jones*, *supra*, 51 Cal.3d at p. 314.) Here, the trial court could reasonably conclude that J.M. made a genuine criminal threat.

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2 In his reply brief, J.M. also argues that because he was detained when he made the threat, Limon's fear was not reasonable. The argument lacks merit because J.M. did not say he was going to kill Limon *at that moment, while detained in the police car*. Rather, he said that *after Limon took him home and released him*, he would return to the neighborhood and kill Limon. The fact that J.M. was detained when he made the threat did not make it unreasonable for Limon to fear that J.M. would do as he said and carry out the threat once released.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

FERNS, J.*

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* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.